

Fair Housing Training 2021: Race, Color & National Origin



J

“More Than Just Words” Thursday, April 15, 2021

**U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
Honolulu Field Office**

AGENDA

- 10:00 a.m. Introduction
- 10:05 a.m. Race , Color and National Origin
- 10:45 a.m. Questions
- 11:00 a.m. Break
- 11:10 a.m. *Panel – Advancing Fair Housing
and Housing Equity for Native Hawaiians and
Underserved Communities*
- 12:15 a.m. Questions
- 12:30 p.m. Evaluation and Wrap-Up

CARRIE ANN SHIROTA

Equal Opportunity Specialist

(808) 457-4676

CARRIEANN.Y.SHIROTA@HUD.GOV

WWW.HUD.GOV



JELANI MADARAKA

LEAD CIVIL RIGHTS ANALYST

(808) 457-4677

JELANI.M.MADARAKA@HUD.GOV

WWW.HUD.GOV

ANY CLARIFICATIONS OR QUESTIONS?

Providing legal information and not legal advice.

Legal information explains the law and the legal system. Generally, Legal Advice applies the law, including statute and case law, and legal principles to a particular situation.

(808) 536-4302

(808) 586-8636

(808) 457-4677

(808) 537-9140

LEGAL AID SOCIETY OF HAWAI'I

HAWAI'I CIVIL RIGHTS COMMISSION

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOP.

(HSBA) LAWYER REFERRAL & INFORMATION SERVICE

If you would like legal advice, please speak to a private attorney.



April is Fair Housing Month

Since 1968, April is a time to remember the Fair Housing Act (FHA) and reflect on the rights it gives citizens. Why April? The FHA became law on April 11, 1968, as Title VIII of the Civil Rights Acts of 1968. But the link with Dr. Martin Luther King, Jr. is the reason we celebrate Fair Housing Month in April. President Lyndon B. Johnson signed the FHA into law one week after the assassination of the civil rights icon.

Every April, we come together as a nation to celebrate the anniversary of the passage of the FHA and recommit to create equal opportunity in every community and eliminate housing discrimination.





April is Fair Housing Month

**“Fair Housing: More Than Just Words”
2021**



**The Fair Housing Law covers
seven basis**

The Fair Housing Act of 1968 and the Fair Housing Amendments Act of 1988 **prohibit discrimination** based on **race, sex, color, religion, national origin, disability and familial status.**

Fair Housing: *More Than Just Words ...*







President Biden's Executive Orders to Advance Racial Equity and Redress the Federal Government's History of Discriminatory Housing Practices and Policies



Implicit Bias

REFERS TO THE ATTITUDES OR STEREOTYPES
THAT AFFECT OUR UNDERSTANDING,
ACTIONS, AND DECISIONS IN AN
UNCONSCIOUS MANNER.

RACE

Race refers to whether a person belongs to one or some mixture of two or more of these racial categories in the U.S. Census:

- 1. American Indian/Alaska Native**
- 2. Asian**
- 3. Black/African American**
- 4. Multi-racial**
- 5. Native Hawaiian/Other Pacific Islander**
- 6. White**



Race Discrimination Cases

Atlanta-Based Landlords Accused of Discriminating Against Blacks May 18, 2020

The Justice Department recently announced that it has filed a lawsuit against the owners and managers of multifamily housing communities in Georgia, alleging that they violated federal fair housing law by intentionally discriminating on the **basis of race against African-American applicants** for housing.

The lawsuit alleges that from at least 2012 to 2018, the defendants steered African-American housing applicants who are elderly or have a disability away from a predominantly white housing complex to a predominantly African-American housing complex, which is inferior in appearance, location, and amenities to the predominantly white community. Both complexes are located in the same city in Georgia.

The complaint also alleges that the **defendants subjected African-American residents who are elderly or have a disability to less favorable rental terms, conditions, and privileges as compared to similarly situated white residents**, and denied African-American applicants more desirable units at the predominantly white community.

Race Discrimination Cases

HUD APPROVES \$35,000 SETTLEMENT RESOLVING CLAIMS OF RACIAL DISCRIMINATION AT NEW YORK APARTMENT COMPLEX (2020)

WASHINGTON - The U.S. Department of Housing and Urban Development (HUD) announced today that it has approved a conciliation agreement between Long Island Housing Services (LIHS) and Farmingdale Villas, LLC, the owner of apartment complexes in Farmingdale, New York, resolving allegations that employees of the housing provider discriminated against applicants based on their **race**. Specifically, LIHS alleged that the **employees treated white testers posing as prospective tenants who were inquiring about apartments more favorably than black testers posing as prospective tenants.**

The Fair Housing Act prohibits housing providers from refusing to rent or negotiate for the rental of housing because of **race or color**. It also prohibits housing providers from treating applicants differently because of race or color.

Racial Discrimination in Appraisal of Property

<https://abc7news.com/black-homeowner-problems-sf-bay-area-housing-discrimination-minority-homeownership-anti-black-policy/10331076/>





COLOR

J

- Refers to the visible color of a person's skin
- Whether a person's skin is light or dark



April is Fair Housing Month

“Fair Housing: More Than Just Words” 2021



**THE COLOR OF YOUR SKIN IS NOT A
QUALIFYING FACTOR**

What Is Color Discrimination?

Color refers to the visible color of a person's skin; that is, whether a person's skin is light or dark.

Color discrimination may be closely related to race discrimination (and sometimes national origin discrimination). In some instances, an act of discrimination against someone could be considered both race and color discrimination.

NATIONAL ORIGIN

includes ancestry, birthplace, culture, language and/or customs.

Some examples...

- Brazilian
- Chinese
- Cuban
- Irish
- Kenyan
- Lebanese
- Puerto Rican
- Samoan





Ethnic Categories: U. S. Census

There are two ethnic categories:

1. Hispanic or Latino
2. Not Hispanic or Latino



April is Fair Housing Month

**“Fair Housing: More Than Just Words
2021**



Who is protected?

National origin discrimination includes treating people differently because of customs, culture, way of dressing, and food associated with their country of origin. National origin refers to person's birthplace, ancestry, language, and/or customs. It is illegal for a landlord to deny housing or treat someone differently because of a person's name, appearance, accent, or participation in customs associated with a nationality

NATIONAL ORIGIN



IMMIGRATION STATUS

Every person in the United States of America is protected under the Fair Housing Act, regardless of their immigration or citizenship status.

42 U.S.C. § 1981 (a) reads, "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts... as is enjoyed by white citizens..." Regardless of immigration status, all persons are entitled to the same right to make and enforce contracts, including leases. See e.g., *Takahashi v. Fish and Game Comm'n*, 334 U.S. 410, 419 (1948); *Graham v. Richardson*, 403 U.S. 365, 377 (1971).



DIFFERENT NATIONAL ORIGINS.



SAME FAIR HOUSING RIGHT



Intersectionality



April is Fair Housing Month

“Fair Housing: More Than Just Words” 2021



What is housing discrimination because of religion?

Discrimination includes applying different terms or conditions of housing, denying applications or steering or restricting persons to certain neighborhoods or buildings because of their religion.

In the process of buying, selling, renting or engaging in other housing-related transactions, it is illegal to discriminate based on religion. Most advertisements that specify preference or restrictions based on religion are also illegal.

National Origin Discrimination – Real Cases

March 19, 2019

- HUD recently announced that the owners of a Minnesota rental home and a realty company have agreed to pay \$74,000 to resolve allegations that they refused to rent the house to a **family of five adults and six minor children because they are Native American and Hispanic and had minor children.**
- The Fair Housing Act makes it unlawful to discriminate in housing because of **race, national origin, and familial status, among other protected characteristics.**
- HUD filed a charge of discrimination after the owners of the rental home allegedly refused to rent the six-bedroom residence to the multi-generational family. HUD's charge alleged that the owners and the real-estate broker discouraged the family from renting the home by offering them less favorable rental terms, including increasing the requested monthly rent by \$1,000.
- Under the settlement, the respondents agreed to pay \$74,000 to the families affected and place a fair housing advertisement in the local newspaper, and the real estate broker will take fair housing and multicultural sensitivity training

More Examples of National Origin Discrimination

February 21, 2019

- A California landlord and her son recently agreed to pay \$16,000 to settle claims that they engaged in a campaign of harassment against a resident, her partner, and their two children based on their **Mexican national origin**. The landlords own and manage a four-unit apartment complex in Orange County, California.
- In her complaint filed with the Department of Fair Employment and Housing (DFEH), a HUD Fair Housing Assistance Program Agency, the resident alleged a months-long pattern of harassing, discriminatory, and threatening behavior by the son towards the family. The harassment included spoken statements such as "I hate Mexicans," discriminatory written notes containing insults about people of Mexican descent, and actions such as opening the family's mail, destroying their household plants, and making threatening gestures.

National Origin Accent Discrimination



<https://www.youtube.com/watch?v=84k2iM30vbY>

Criminal Records



- **HAVING A CRIMINAL RECORD IS NOT A PROTECTED BASIS**
- **HOWEVER, BECAUSE CERTAIN POPULATIONS BECAUSE OF THEIR RACE AND NATIONAL ORIGIN ARE ARRESTED, CONVICTED AND INCARCERATED AT DISPROPORTIONATE RATES, USING CRIMINAL RECORDS TO DISQUALIFY HOUSING APPLICANTS COULD HAVE A DISPARATE IMPACT ON CERTAIN PROTECTED GROUPS AND THUS VIOLATE THE FAIR HOUSING ACT**
- **CONSIDERATIONS INCLUDE THE NATURE AND SEVERITY OF THE CONVICTION AND THE TIME SINCE OCCURRENCE**
- **CANNOT EXCLUDE A TENANT OR APPLICANT BASED ON AN ARREST**

Criminal Records continued...

1. Does the policy have a discriminatory effect?

- Plaintiff or HUD must prove the policy has a discriminatory effect
- National or local statistical evidence

2. Is the policy necessary to achieve a substantial, legitimate, nondiscriminatory interest?

- Burden shifts to housing provider to show that policy or practice is justified
- Exclusions because of prior arrests fails



Criminal Records

3. Is there a less discriminatory alternative?

- Conduct an assessment with individualized evidence
- Arrest or conviction?
- Nature and severity of the crime
- Facts or circumstances surrounding the criminal conduct
- Age of the individual at the time of the conduct/ How long ago was the crime committed?
- Whether the person had a good tenant history before and/or after the conviction or conduct AND
- Evidence of rehabilitation efforts (i.e. substance abuse treatment, vocational and educational success, involvement in church and community groups, etc.) and post-conviction innocence

Guidance on Fair Housing and Use of Criminal Records

- Statutory Exception to Fair Housing Act liability (Fair Housing Act 807(b)(4) – a housing provider will not be liable for excluding persons because they have been convicted of drug manufacturing or distribution of a controlled substance as defined in section 2 of the Controlled Substances Act (21 U.S.C. 802)

Note: Exemption only applies to disparate impact cases, not disparate treatment cases

- See HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions 2016

Criminal Records: Disparate Impact on Race & National Origin Discrimination

RACE DISCRIMINATION LAWSUIT AGAINST NATION'S LARGEST PRIVATE LANDLORD: CONSENT ORDER REQUIRES INDIVIDUALIZED REVIEW OF HOUSING APPLICANTS WITH CERTAIN CRIMINAL CONVICTIONS - OCTOBER 5, 2018

The Equal Rights Center ("ERC") announced the resolution of claims against Mid-America Apartment Communities, Inc., and Mid-America Apartments, L.P. ("MAA") that its **exclusion of housing applicants with certain criminal records, including any felony conviction, discriminated against such individuals on the basis of race and national origin**. To resolve the lawsuit, the parties entered into a court enforced agreement that requires MAA to immediately adopt a criminal background screening policy that individually assesses applicants with criminal convictions.

African American and Latino housing applicants to MAA properties were between two and twelve times as likely to be prevented from applying for an apartment due to MAA's previous policy. The lawsuit claimed that MAA's criminal records screening policy had an illegal and disproportionate effect on African American and Latino applicants in violation of the Fair Housing Act. The over-breadth of the policy excluded many people of color without providing any greater safety or security to MAA tenants, particularly in light of other less discriminatory screening mechanisms. In addition to requiring MAA to utilize an individualized assessment of each applicant with a criminal conviction limited to a specified period of time depending on the offense, the new policy prohibits the consideration of arrests or pending charges, expunged convictions, and convictions reversed on appeal or where a new trial has been ordered but not held. Applicants with convictions flagged through MAA's third-party service provider will be afforded the opportunity to provide additional information for MAA's consideration under the new policy.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

- Prohibits discrimination on the basis of race, color, and national origin in all **federally funded programs**
- Prohibits recipients of **federal financial assistance** from discriminating on the basis of or using methods of administration that have the effect of limiting or denying participation on the basis of race, color, and national origin

Who does Title VI apply to?

- Applicable for recipients (City, County) *and* sub-recipients (housing authorities, RAD management groups)
- Executive Order 13166 and HUD issued guidance indicates all Recipients must take reasonable steps to provide meaningful access to the information and services they provide.



Limited English Proficiency (Guidance)

- January 22, 2007: HUD issued final guidance to assist federal recipients in developing procedures to ensure participation of persons who are Limited English Proficient (LEP)
- Guidance was a result of Executive Order 13166, which directed federal agencies to develop LEP policies for their recipients

Limited English Proficiency

- Policies/procedures in place to assist Limited English Proficient (LEP) persons
- Ensure meaningful access to HUD-funded programs for LEP persons (24 CFR 1.4



Limited English Proficiency

Language Access Plan (LAP) -Policies/procedures in place to assist Limited English Proficient (LEP) persons

- I Speak cards available for staff at point of contact interactive
- Collect participants preferred interaction language
- Vital documents- translated

Oral interpretation:

Oral interpretation is always a requirement for all languages
Language cards to allow identification of language spoken
Resources such as language line, use of staff

Never: "If you need a translator, bring your own"





Harassment Based on All Protected Classes is Unlawful

Nature of Harassment

Words (i.e. slurs, derogatory comments, threats)

Actions (i.e. social media, displays, phone calls, touching, assault)

Severity

In many cases, more than one incident is considered severe

One incident can be considered severe

Frequency/Pervasive

How often is the harassment?

Consider Totality of the Circumstances

Harassment Examples



- Slurs and derogatory comments related to race, color, or national origin
- Leaving notes on door or car
- Spying , stalking, vandalizing property
- Displaying swastikas, noose, signs
- Threats of violence
- Staring, spying, stalking

More Harassment Examples

- Touching, throwing objects, assault
- Threaten to report person to police or ICE
- Threaten to evict person for refusal to remove traditional or religious clothing
- Threaten to evict because of the smell of cultural food





Liability for Discriminatory Conduct

- A person/housing program provider may be liable when their **own conduct** results in a discriminatory housing practice
- A person/housing program provider may be **vicariously liable** for conduct committed by their agent or employee

Third Party Liability

A person/housing provider may be liable for a discriminatory housing practice committed by a **third party** (e.g., tenant on tenant, guest, vendor) when the person/housing provider:

Knew or should have known of the third party's discriminatory conduct,

Had **Authority over the third party, and**

Did not take prompt corrective action to end the discriminatory conduct



Create a Harassment Free Environment



Fair housing training for all staff

Adopt harassment policies

Ensure all participants know who to inform if they experience harassment

Everyone needs to be clear on harassment policies & procedures



Practical Tips to Respond to Harassment

1. Got a complaint, investigate!

2. Investigate/Document

- Interview Person who Alleges Discrimination
- Witnesses
- If appropriate, contact law enforcement
- Alleged Harasser
- Review evidence (i.e. police reports, court documents, pictures, videos, texts, etc.)

3. Take prompt corrective action

- may be a verbal warning
- may be a written notice/violation
- moving a tenant
- mediation (may not be appropriate in all cases)
- termination

CORRECTIVE ACTION

☒ YES
☐ NO



4. If you can't corroborate the allegation, let the person accused know your legal responsibility
5. When appropriate, ensure corrective action was effective
6. Follow-up with the person who alleged the harm
7. Document

Fair Housing Resources

Harassment

- Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act – Final Rule (September 14, 2016)

Criminal Records

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (April 4, 2016)
- Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions (November 2, 2015)

More Fair Housing Resources

Limited English Proficiency

- Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency (September 15, 2016)
- Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (January 22, 2007)

Videos

A Matter of Place

Racial Harassment (tenant on tenant)

https://www.youtube.com/watch?v=x0Z_qjBHITs&feature=youtu.be

A wooden signpost with two directional signs. The top sign is a wooden arrow pointing right with the word 'QUESTIONS' in bold black capital letters. The bottom sign is a wooden arrow pointing left with the word 'ANSWERS' in bold black capital letters. The signpost is made of weathered wood and is set against a bright blue sky with scattered white clouds. The entire image has a torn paper edge effect.

QUESTIONS

ANSWERS

Skills- Building Exercise

Makai Realty Company and its former rental agent offered Caucasian tester applicants rental discounts and opportunities to inspect units that were not offered to African American tester applicants. What, if any, aspect of the Fair Housing Act does this violate?

- A. Refusal to Rent
- B. Discriminatory terms & conditions
- C. Otherwise making housing unavailable
- D. I have no idea

True or False

A Housing provider may turn down a Pacific Islander applicant because of the applicant's lack of a steady job and income.

Skills- Building Exercise

Manager Danny welcomes residents of all races and national origins into his apartment complex, but he encourages the Filipino (Ilocano)-speaking applicants to rent in building A rather than building B because building A has more Ilocano speaking residents and they will feel more at home surrounded by people who speak the same language. Is it ok for Danny to do this under the Fair Housing Act?

- A. Yes
- B. No
- C. Don't know

Break



Moderated Panel

**Advancing Fair Housing and Housing Equity
for Native Hawaiians and
Underserved Communities in Hawai'i**

Panelists

Jocelyn Doane, Esq.

City and County of Honolulu

Lehua Kinilau-Cano, Esq.

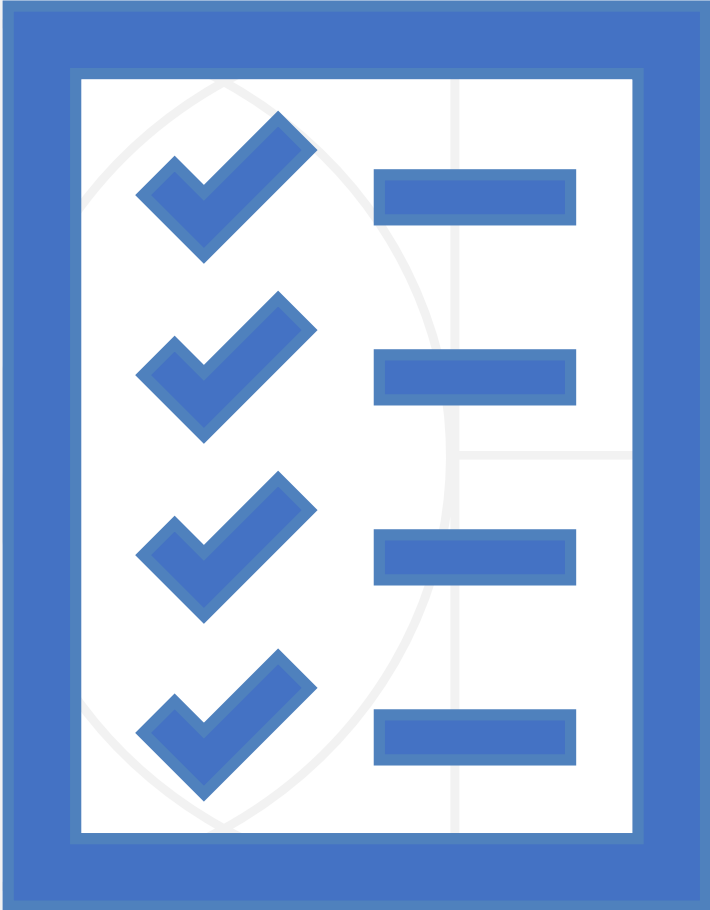
Department of Hawaiian Homelands

Lindsay Kukona Pakele, Esq.

Legal Aid Society of Hawai'i

Richard Medeiros

Council for Native Hawaiian Advancement



Evaluation

We welcome your
feedback to improve our
Fair Housing trainings!





Mahalo!

FOR HELPING US BUILD A
JUST SOCIETY WITH
STRONG, SUSTAINABLE,
DIVERSE AND INCLUSIVE
COMMUNITIES!